Supreme Court, U.S.
FILED

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No.

October Term 1998

IN THE
SUPREME COURT OF THE UNITED STATES

DAMON THOMAS
Petitioner,
vs.
STATE OF MISSOURI
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MISSOURI

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

DOES MISSOURI PROCEDURE FOR EXTRADITION OF A CONFINED INDICTEE, WHICH DOES NOT REQUIRE THE STATE TO NOTIFY AN INCARCERATED INDIVIDUAL OF THE PENDENCY OF AN INDICTMENT WITHIN ANY PARTICULAR TIME FRAME, CONFLICT WITH THE SPEEDY TRIAL PROVISIONS OF THE 6TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION, UNDER CIRCUMSTANCES IN WHICH THE STATE IS AWARE OF THE LOCATION OF THE CONFINED INDICTEE.

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Dickey v. Florida, 398 U.S. 30 (1970)
Doggett v. U.S., 505 U.S. 607 (1992)
Smith v. Hooey, 393 U.S. 174 (1969)
State of Missouri v. Leady, 879 S.W.2d 644 (Mo. App. 1994)

OPINIONS BELOW

State of Missouri v. Thomas, 972 S.W.2d 309 (Mo App WD 1998)

JURISDICTION

The opinion affirming the Petitioners conviction was handed down March 31, 1998, by the Missouri Court of Appeals for the Western District. A Motion for Rehearing or Transfer was filed April 14, 1998, in the Missouri Court of Appeals for the Western District. This Motion was denied on June 2, 1998. An Application was filed for Transfer to the Missouri Supreme Court on June 17, 1998. On August 25, 1998, the Supreme Court of Missouri denied transfer and the mandate of the Missouri Court of Appeals for the Western District was returned on that date.

This Petition for Writ of Certiorari is initially filed in this Court within 90 days of that date following which discretionary review by the Missouri Supreme Court was denied. Petitioner invokes the jurisdiction of this Court pursuant to **U.S. Sup. Ct. R. 13.1 and 10 (c) and 28 U.S.C. 1257(a).**

CONSTITUTIONAL PROVISIONS

U.S. Constitution Amendment 6
U.S. Constitution Amendment 14

STATUTORY PROVISIONS

Missouri Disposition of Detainers Act
R.S.Mo. § 217.450 & § 217.490

STATEMENT OF THE CASE

Petitioner was charged December 19, 1994, by a grand jury in Cole County, Missouri, with the offense of first degree assault (**§ 575.150**) and armed criminal action (**§ 571.030.1 (1)**). (Statutory references are to **Revised Statutes of Missouri**).

The Petitioner was arrested by the State of Kansas on February 28, 1995, and confined continuously within the State of Kansas from and after that time on a previously imposed sentence.

On March 4, 1996, the Defendant was served with a copy of the Missouri Indictment while in custody in the State of Kansas, on unrelated charges, until he was removed to Missouri on December 2, 1996.

Both Missouri and Kansas are signatories to the Missouri Disposition of Detainers Act, **R.S.Mo. § 217.450 and § 217.490,** which set forth the procedure set to follow that act, (see Appendices p. 11-19).

The State of Missouri was aware of the Defendant's location from his arrest on February 28, 1995, in Kansas, until his extradition to Missouri, although the State of Missouri failed to serve the Indictment on the Defendant until March 4, 1996, a period in excess of one year.

Following his extradition, the Defendant filed a Motion to Dismiss, raising the issue of the speedy trial provisions of the Missouri Disposition of Detainers Act, which implicates the 6th and 14th Amendment of the U.S. Constitution.

Following this Motion, which was overruled by the trial court (Circuit Court of Cole County, Missouri), the Petitioner proceeded to trial and was convicted, receiving a life sentence for assault and a 50 year sentence for armed criminal action to be served consecutively.

A timely Appeal was taken to the Missouri Court of Appeals in the Western District, which filed its opinion denying relief, which opinion addressed the issue of the application of the Missouri Disposition of Detainers Act and the implications of this Act on the 6th Amendment and the 14th Amendment of the U.S. Constitution,

(see Appendix, p. 1-8).

A timely Application for Transfer was filed to the Supreme Court of Missouri, Missouri's highest court, which was denied August 25, 1998, following which the mandate was issued from the Missouri Court of Appeals for the Western District in accordance with its opinion, (see Appendix, p. 9).

REASONS FOR GRANTING THE WRIT

Pursuant to **U.S. Sup. Ct. R. 10 (c)**, Petitioner believes that the decision by the Missouri Court of Appeals and the Rejection of Review by the Missouri Supreme Court is in conflict with the decision of this Court in **Dickey v. Florida, 398 U.S. 30 (1970)**, in which this Court held that failing to make a demand for the return of an individual by an indicting State, solely for the convenience of that State, was improper.

In addition, this Court has held that an indictee's right to a speedy trial implicates the 6th Amendment to the U.S. Constitution, made applicable to the States by the 14th Amendment, **Smith v. Hooey, 393 U.S. 374 (1969)**.

This Court has condemned the failure of a prosecuting authority to seek custody of an indictee even by simple negligence, **Doggett v. United States, 505 U.S. 607 (1992)** wherein this Court dismissed a pending Indictment on speedy trial grounds, absent any evidence that the putative Defendant was aware of the pending charges.

The ruling of the Missouri Court of Appeals and the subsequent failure of the Missouri Supreme Court to overturn this ruling effectively thwart speedy trial rights of detainees by permitting the State, in situations in which it is aware of the location of an incarcerated indictee, to fail to file its detainer expeditiously. Missouri procedure as followed by the Missouri Supreme Court defined in **State v. Leady, 879 SW 2d 644, Mo. App. 1994)** interpreting the relevant statute governing the Missouri Disposition of Detainers Act, holds that the time limitations do not commence to run against

the State until one year **after** the detainer has been filed at the facility wherein the indictee is confined.

The Missouri statute in question requires that an individual, who is confined in an institution, be informed of any pending Indictment within one year after such Indictment or detainer has been filed at the facility upon ground of dismissal with prejudice of any pending charges. However, there is no concomitant requirement that the State of Missouri file such a detainer within any time frame whatsoever, thereby precluding a confined indictee from being advised of the pendency of any charges and his concomitant right to demand disposition of that detainer in a speedy fashion, except at the convenience of the State.

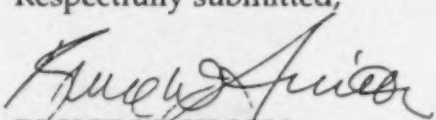
Logic dictates that an indictee cannot demand relief by seeking disposition of an untried detainer until he is informed of such detainer. To afford the indicting State, in circumstances in which it is aware of the location of an indictee, sole discretion over the timing of such filing, vitiates the indictee's right to speedy trial.

The decision by the Missouri courts, in reliance on their earlier interpretation of the application of Missouri Disposition of Detainers Act, effectively deny Petitioner a speedy trial by permitting the State to delay filing of its detainer, which act the Missouri courts have determined is the condition predicate under which an individual may seek disposition of new charges. The Petitioner believes that the Missouri system, which does not compel any action by the State, but which effectively fails to compel notice to an incarcerated individual of any new charges is in conflict with earlier decisions of this Court and the mandate of the 6th and 14th Amendments to the U.S. Constitution.

CONCLUSION

The Petitioner respectfully requests this Court to issue its Writ of Certiorari to review the Opinion and Judgment entered by the Missouri Court of Appeals, Western Division, and of which review was denied by the Missouri Supreme Court.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

In accordance with **Rule 29.3**, I hereby certify that 3 copies of the foregoing Petition for Writ of Certiorari have been served on the Office of the Attorney General for the State of Missouri, State Capitol, Jefferson City, Missouri, 65101.

I further certify that all parties required to be served, have been served.

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MISSOURI COURT OF APPEALS

WESTERN DISTRICT

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
vs.	)	WD 54180
	)	
	)	Opinion filed:
DAMON A. THOMAS,	)	March 31, 1998
	)	
Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY

The Honorable Byron L. Kinder, Judge

Before Ulrich, C.J.; Lowenstein, J. and Howard J.

Damon Thomas appeals from his convictions following jury trial for assault in the first degree, section 565.050, RSMo 1994, and armed criminal action, section 571.015, RSMo 1994, and consecutive terms of life imprisonment on the first degree assault conviction and fifty years imprisonment on the armed criminal action conviction. Mr. Thomas raises three points of trial court error. He argues the trial court erred by: (1) denying his motion to dismiss where the state failed to comply with the requirements of the Uniform Mandatory Disposition of Detainers Law, Section 217.450, RSMo 1994; (2) denying his motion for acquittal where the information failed to charge the requisite mental state of first degree assault; and (3) admitting Officer David Kling's testimony regarding the display of the photo line-up to the witnesses. The judgment of convictions is affirmed.

FACTS

Michelle Lee, Nikita Pope, Danielle Duhart and Lindara Galbreth went to the Seven-Eleven Party Center in Jefferson City, Missouri, on August 17, 1993 at 9:30 p.m. to purchase beverages. While inside the store, Damon Thomas began talking to the four women. Mr. Thomas bought Ms. Duhart a soda and gave her a piece of paper with his pager number on it. Mr. Thomas left the store with the four women and went outside to talk with Terry Covington and a man named Clarence. The four women saw Mr. Covington and Clarence leave in a white Tempo with Kansas plates. They also noticed Mr. Thomas walking to the side of the building.

When the four women reached their car, they began to talk to two men parked next to them, Ryan Randolph and Donald Easley. Ms. Duhart and Ms. Pope stood up with the driver's side door open while Ms. Lee and Ms. Galbreth sat in the car. While the four women talked to Mr. Randolph and Mr. Easley, they heard gunshots. Mr. Easley and Ms. Pope looked up and saw Mr. Thomas holding a gun and firing in their general direction. Ms. Duhart did not see who shot the gun but noticed that the sound of shots being fired was coming from the area in which she last saw Mr. Thomas. At least six shots were fired. One of the bullets struck Ms. Lee in her neck, leaving her paralyzed from the neck down.

When the police arrived, Ms. Duhart and Ms. Pope gave them a description of the white car that Mr. Covington and Clarence were in and gave them Mr. Thomas's pager number. Later, the police spotted a white Tempo with Kansas plates and a pursuit ensued. Eventually the car stopped, and three men ran from the car. None of the men were apprehended that evening. Inside the car, the police found a cleaning receipt and audio tape with Mr. Thomas's name on them.

At trial, Officer David Kling testified regarding the photo spread he had shown to the witnesses. Over Mr. Thomas's objection, the photo spread that Officer Kling had shown to the witnesses was introduced into evidence. At the close of the evidence, the jury found Mr. Thomas guilty of first degree assault and armed criminal action. The trial court sentenced him as a prior offender to consecutive terms of life imprisonment on the first degree assault convic-

tion and fifty years on the armed criminal action conviction. This appeal followed.

I. THE STATE COMPLIED WITH THE REQUIREMENTS OF THE UNIFORM MANDATORY DISPOSITION OF DETAINERS LAW

As his first point on appeal, Mr. Thomas argues the trial court erred by failing to sustain his motion to dismiss due to the state's alleged failure to comply with the Uniform Mandatory Disposition of Detainers Law. Mr. Thomas specifically argues that the mandate of the Uniform Mandatory Disposition of Detainers Law was not met because he was not informed within one year of his incarceration in Kansas the indictment[1] was pending against him in Missouri as required by section 217.450, RSMo 1994.

The Uniform Mandatory Disposition of Detainers Law is set forth at sections 217.450 to 217.485, RSMo 1994. **§ 217.450-217.485, RSMo 1994.** Section 217.450, RSMo 1994, provides:

> 1. A person confined in a department correctional facility may request a final disposition of any untried indictment, information or complaint pending in this state on the basis of which a detainer has been lodged against him while so imprisoned. The request shall be in writing addressed to the court in which the indictment, information or complaint is pending and to the prosecuting attorney charged with the duty of prosecuting it, and shall set forth the place of imprisonment.
>
> 2. The director shall promptly inform each offender in writing of the source and nature of any untried indictment, information or complain for which a detainer has been lodged against him of which the director has knowledge, and of his right to make a request for final disposition of such indictment, information or complaint on which the detainer is based.

[1] The state ultimately proceeded to trial on a second substitute information in lieu of indictment.

> 3. Failure of the director to inform an offender, as required by this section, within one year after a detainer has been filed at the facility shall entitle him to a final dismissal of the indictment, information or complaint with prejudice.

§ 217.450, RSMo 1994. The one year notice requirement in section 217.450.3 does not begin to run until after a detainer has been filed at a correctional facility. ***State v. Leady*, 879 S.W.2d 644 (Mo. App. 1994)** (citing **§ 217.450.3, RSMo 1994**).

In *Leady*, the defendant contended the mandates of section 217.450 were not complied with because he was incarcerated for more than one year between the filing of the charges against him and the date of his trial without being officially informed in writing of the source and nature of the complaint against him. *Id.* **at 649.** The court noted that under section 217.450, the defendant would have been entitled to a final dismissal of the information with prejudice if a detainer had been filed against the defendant at the facility. *Id.* **at 650.** However, because no detainer was filed, the one year requirement was not invoked and, hence, the defendant was not entitled to a dismissal of the information. *Id.*

Mr. Thomas is not entitled to a dismissal of the information. As the court noted in *Leady*, the one year statutory notice requirement did not begin to run until a detainer had been filed against Mr. Thomas at the Kansas correctional facility. The state caused a letter to be send to the Ellsworth Correctional Center in Ellsworth, Kansas, on February 15, 1996, asking that a detainer be placed on Mr. Thomas. As established in *Leady*, the filing of the detainer triggered the one year notice requirement of section 217.450. Mr. Thomas, therefore, would have been entitled to a final dismissal of the information with prejudice if he had not received notice of the detainer within one year from the date the detainer was filed with the Kansas correctional facility. Mr. Thomas, however, received notice of the detainer on March 4, 1996, within the one year limit imposed by section 217.450. While Mr. Thomas alleges he was incarcerated in Kansas for more than one year before he received notice of the charges pending against him in Missouri, as established in *Leady*, that is irrelevant to whether the notice requirement of section

217.450.3 was satisfied. Because the state sent Mr. Thomas notice of the detainer within one year of the date the detainer was filed with the Kansas correctional facility in which Mr. Thomas was incarcerated, the one year notice requirement of section 217.450 was met and, hence, Mr. Thomas was not entitled to a dismissal of the indictment. Point one is denied.

II. THE INFORMATION WAS SUFFICIENT TO CHARGE MR. THOMAS WITH FIRST DEGREE ASSAULT

As his second point on appeal, Mr. Thomas argues that the trial court erred by failing to sustain his motion for judgment of acquittal at the close of the state's evidence and at the close of all evidence. The essence of Mr. Thomas's complaint is that the second substitute information fails to allege that he committed a section 565.050 violation because the information did not allege that Mr. Thomas "knowingly" attempted to kill or cause physical injury to Mr. Randolph, Mr. Easley and Ms. Lee.

Section 565.050 provides:

> 1. A person commits the crime of assault in the first degree if he attempts to kill *or* knowingly causes *or* attempts to cause serious physical injury to another person.
> 2. Assault in the first degree is a class B felony unless in the course thereof the actor inflicts serious injury on the victim in which case it is a class A felony.

§ 565.050, RSMo 1994 (emphasis added). The language used in section 565.050 is in the disjunctive, indicating that a person commits the crime of first degree assault if he either (1) attempts to kill; (2) knowingly causes serious physical injury to another person; or (3) attempts to cause serious physical injury to another person. **§ 565.050, RSMo.** The charging document is sufficient if it contains the elements of the charged offense, fairly informs the defendant of the charge, and enables the defendant to plead double jeopardy as a bar to future prosecution for the same offense. ***State v. Boyd*, 927 S.W.2d 385, 389-90 (Mo. App. 1996).**

The second substitute information was sufficient to charge

Mr. Thomas with a section 565.050 violation. Because section 565.050 uses the disjunctive "or", the information needed only allege that Mr. Thomas *either* (1) attempted to kill; (2) knowingly caused serious physical injury to another person; *or* (3) attempted to cause serious physical injury to another person. The second substitute information stated that Mr. Thomas committed first degree assault under subsections (1) and (3) in that he "attempted to kill or cause serious physical injury to Ryan Randolph and Donald Easley by shooting at them with a gun and in the course thereof inflicted serious physical injury on Michelle Lee by shooting her with a gun." Contrary to Mr. Thomas's allegations, the State was not required to allege that he "knowingly" attempted to kill or cause serious physical injury. Each of the three subsections includes the requirement that the person charged must have acted wilfully and knowingly. The necessity to allege the culpable mental state, that the defendant acted knowingly and wilfully, is included within the statutory words defining each of the three way for committing the offense. Thus, to allege that Mr. Thomas attempted to kill or that he attempted to cause serious physical injury asserts that his conduct was willful and knowing. ***See Arellano v. State*, 779 S.W.2d 631, 632 (Mo. App. 1989)** (finding information correctly charged section 565.050 violation where is alleged that defendant "attempted to kill or cause serious physical injury to [victim] by shooting at him"). Because the State was not required to allege that Mr. Thomas "knowingly" attempted to kill or cause serious physical injury mental state, the information sufficiently charged Mr. Thomas with a section 565.050 violation. Point two is denied.

III. THE ADMISSION OF THE PHOTO LINE-UP WAS PROPER

As his third point on appeal, Mr. Thomas argues that the trial court erred by admitting into evidence the photo spread that Officer Kling had shown to the witnesses that contained Mr. Thomas's photograph. Mr. Thomas argues that the admission of the photo line-up constituted impermissible bolstering of the indentifying witnesses' testimony under ***State v. Degraffenreid*, 477**

S.W.2d 57 (Mo. banc 1972), and, therefore, he is entitled to a new trial.

In *Degraffenreid,* the Missouri Supreme Court reverses the trial court's admittance of a police officer's testimony that corroborated an eyewitness's testimony regarding his identification of defendant during two lineups when the identification testimony had not been impeached. *Id.* at 64-65. The Court found that, under these circumstances, the police officer's testimony constituted inadmissible hearsay and improper bolstering. *Id.*

In *State v. Harris,* 711 S.W.2d 881 (Mo. banc 1986), however, the Missouri Supreme Court partially reversed itself. *Id.* at 881-85; *accord State v. Wade,* 926 S.W.2d 43, 45 (Mo. App. 196); *Calvin v. State,* 768 S.W.2d 155, 157 (Mo. App. 1989); *Granger v. State,* 746 S.W.2d 598, 601 (Mo. App. 1988). In *Harris,* the trial court admitted cumulative testimony by a police officer regarding an eyewitness's identification of the defendant during a lineup. *Harris,* 711 S.W.2d at 881. In affirming the trial court's admittance of the police officer's testimony, the Supreme Court rejected the *Degraffenreid* court's decision to "fashion[] a *per se* rule against third person, unimpeached testimony which described the same as inadmissible hearsay." *Id.* at 884. The Supreme Court stated that although the trial court retained the discretion to sustain objections to such testimony based on other traditional grounds, such as bolstering or cumulative evidence, such testimony was not *per se* inadmissible. *Id.*

Mr. Thomas's contention that the trial court committed error under *Degraffenreid* is without merit. Officer Kling testified as follows:

Q: And did you prepare a photo spreadline to show to the three eyewitnesses that were there that day?

A: Yes, sir, I did.

[OBJECTION BY DEFENSE OVERRULED BY COURT]

Q: I'm showing you what's been marked as State's exhibit No. 9. Do you recognize this?

A: Yes, sir, I do.

Q: What is this?

A: This is the photo spread that I compiled in regards to this investigation.
Q: Is this the photo spread that you showed the witnesses?
A: Yes, it is.
Q: Is the defendant's picture in that photo spread?
A: Yes.
Q: Which photo is it?
A: Photo No. 1 in the upper left corner.

A *Degraffenreid* violation could only have occurred had Officer Kling testified that the witnesses identified Mr. Thomas from the photo line-up. Officer Kling, however, never testified that the eyewitnesses identified Mr. Thomas from the photo line-up. Instead, he testified only that State's exhibit No. 9 was the photo line-up he showed the witnesses. Because Officer Kling never testified that the witnesses identified Mr. Thomas from the photo line-up, *Degraffenreid* was not implicated. The trial court, therefore, did not err in admitting the photo line-up in evidence. Point three is denied.

The judgment of convictions is affirmed.

Robert G. Ulrich, Chief Judge
Presiding Judge

All concur

In the Supreme Court of Missouri

No. 80896
W.D. No. 54180

May Session, 1998

State of Missouri, Respondent,

vs. (TRANSFER)

Damon A. Thomas, Appellant.

Now at this day, on consideration of Appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Western District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Thomas F. Simon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the May Session, 1998, and on the 25th day of August, 1998, in the above-entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson, this 25th day of August, 1998.

Thomas Simon Clerk

_____ D.C.

U.S. CONSTITUTION

ARTICLE [VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. CONSTITUTION

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

217.450. DISPOSITION OF DETAINERS

Prisoner may request final disposition of pending indictment, information or complaint for which detainer has been lodged, how requested–director to notify offender, effect of failure to notify.

1. Any person confined in a department correctional facility may request a final disposition of any untried indictment, information or complaint pending in this state on the basis of which a detainer has been lodged against him while so imprisoned. The request shall be in writing addressed to the court in which the indictment, information or complaint is pending and to the prosecuting attorney charged with the duty of prosecuting it, and shall set forth the place of imprisonment.

2. The director shall promptly inform each offender in writing of the source and nature of any untried indictment, information or complaint for which a detainer has been lodged against him of which the director has knowledge, and of his right to make a request for final disposition of such indictment, information or complaint on which the detainer is based.

3. Failure of the director to inform an offender, as required by this section, within one year after a detainer has been filed at the facility shall entitle him to a final dismissal of the indictment, information or complaint with prejudice. (L.1982, H.B. No. 1196, § A (§ 78). Amended by L.1989, H.B. No. 408, § A; L.1995, H.B. No. 424, § A.

217.490. Agreement on detainers adopted–compact text

The "Agreement on Detainers" is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

AGREEMENT ON DETAINERS

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

1. **"State"** means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the commonwealth of Puerto Rico.

2. **"Sending state"** means a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III of this agreement or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

3. **"Receiving state"** means the state in which trial is to be had on an indictment, information or complaint pursuant to article III or article IV of this agreement.

ARTICLE III

1. Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

2. The written notice and request for final disposition referred to in paragraph 1 of this article shall be given or sent by the prisoner to the warden, director of the division of adult institution or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

3. The warden, director of the division of adult institutions of other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

4. Any request for final disposition made by a prisoner pursuant to paragraph 1 of this article shall operate as a request for final disposition of all untried indictments, informations or com-

plaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, director of the division of adult institutions or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

5. Any request for final disposition made by a prisoner pursuant to paragraph 1 of this article shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph 4 of this article, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

6. Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph 1 of this article shall void the request.

ARTICLE IV

1. The appropriate officers of the jurisdiction in which an untried indictment, information or complaint is pending shall be

entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with paragraph 1 of article V of this agreement upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court have jurisdiction of the indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

2. Upon receipt of the officer's written request as provided in paragraph 1 of this article, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. The authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

3. In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

4. Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph 1 of this article, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively con-

sented to or ordered such delivery.

5. If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to paragraph 5 of article V of this agreement, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

1. In response to a request made under article III or article IV of this agreement, the appropriate authority in a sending state shall offer to delivery temporary custody of the prisoner to the appropriate authority in the state where the indictment, information or complaint is pending against the person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

2. The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given; and

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

3. If the appropriate authority shall refuse or fail to accept temporary custody of the person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodges is not brought to trial within the period

provided in article III or article IV of this agreement, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

4. The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

5. At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

6. During the continuance of temporary custody of while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

7. For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

8. From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph

shall govern unless the states concerned shall have entered into an supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

1. In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of the time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

2. No provisions of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(L.1982, H.B. No. 1196, § A (§ 86).)